



3340 West Market St.
Akron, OH 44333
1.800.860.1261

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 19, 2004

VIA HAND DELIVERY

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket 00-257: Notice of First Communications,
LLC of Transfer of Subscriber Base Pursuant to
Section 64.120

Dear Ms. Dortch:

Pursuant to section 64.120(e) of the Commission's rules, 47
C.F.R. §64.120(e), First Communications LLC ("First Communications")
respectfully submits this letter notifying the Commission of First
Communications' upcoming acquisition of CellNet Long Distance's
("CellNet") long distance customer subscriber base. Also enclosed please find
a copy of the customer notification mailed to each of the affected customers.

Both First Communications and CellNet provide long distance
telecommunications services. For more than ten (10) years, First
Communications has been providing the underlying network transmission
service to CellNet and its long distance customers. On or about June 10,
2004, First Communications will acquire CellNet's long distance customer
base and provide long distance services to those customers directly. As a
result of the transfer, CellNet will change its name to NextCall.

First Communications provides the following information
pursuant to 47 C.F.R. §64.120(e):

Parties to the Transaction: The service providers involved are
First Communications LLP and CellNet Long Distance.

No. of Copies rec'd 015
List ABCDE

Indianapolis, Indiana

Chicago, Illinois

firstcomm.com



3340 West Market St
Akron, OH 44333
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Marlene H. Dortch, Secretary
May 19, 2004
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Type of Telecommunications Services Provided to the Affected Subscribers The customer migration affects interstate long distance services only.

Date of Transfer of the Subscribers to Acquiring Carrier The acquisition of subscribers from CellNet to First Communications, relevant to this notice, is expected to occur on or after June 10, 2004.

Copy of Notice Sent to Affected Customers. In accordance with section 64.1120(e)(3) of the Commission's rules, on May 10, 2004, First Communications notified the affected customers of the proposed transaction. A copy of the customer notice is provided as *Attachment 1*. First also enclosed a copy of its terms and conditions with each customer notice. The customer notice and terms and conditions of service comply with 47 C.F.R. § 64.1120(e)(3) and include the following relevant information: (1) the June 10, 2004, date of migration; (2) rates, terms and conditions of service of the acquiring carrier, First Communications; (3) a statement that the affected customers will not be assessed any charges as a result of the migration; (4) a statement that if, within the first ninety (90) days of the migration, an affected customer is not satisfied with First Communications, First Communications will pay the necessary fee to switch the affected customer to the long distance customer of choice barring any PIC freeze; and (5) the toll-free number of First Communications as well as CellNet for the affected customers to receive additional information and/or resolve questions regarding the migration.

This letter notification and attached customer notice and terms and conditions of service satisfy the Commission's requirements set forth in CC Docket No. 00-257, *2000 Biennial Review of Policies and Rules Concerning Unauthorized Changes of Consumers of Long Distance Carriers*, and 47 C.F.R. § 64.1120(e). If you have any questions or would like additional information, please do not hesitate to contact the undersigned.

Respectfully submitted,

Joseph R. Morris
V.P. Corporate Operations

Indianapolis, Indiana

Chicago, Illinois

firstcomm.com



IMPORTANT INFORMATION REGARDING YOUR TELECOMMUNICATIONS SERVICE.

May 10, 2004

Dear ,

We are happy to share some exciting news about your long distance telephone service. For more than 10 years, First Communications LLC has been providing underlying network transmission to CellNet and its customers. We are proud to announce that beginning June 10, 2004, CellNet long distance services will be provided directly by First Communications. In addition, CellNet Long Distance will change its name to NextCall. We will begin operations strictly as a customer acquisition arm of First Communications for local and long distance service and will continue to maintain our wireless relationship with Nextel.

What does this mean?

You will continue to receive the excellent quality you're already receiving on your calls. Plus, all of the great things that you have come to expect from CellNet will remain the same. There will be **NO** interruption in service, **NO** change to your rates, service options, or the way that you dial. In addition, you will still have access to excellent customer care representatives.

Will I be charged for this change?

Absolutely **NOT!** There will be no charge or fee as a result of this change. The only difference that you will notice will be the name of your carrier and the look of your new monthly bill.

Who is First Communications?

First Communications, for more than 20 years has been an innovative company committed to providing excellent service, savings and choices you expect from a full service provider. For more information about First Communications LLC, please visit our website- www.firstcomm.com.

Included with this letter is a copy of First Communications Terms and Conditions. To locate a copy or check for updates please visit our website, or watch for inserts in your monthly bill. If, within the first 90 days, you are not satisfied with First Communications service, we will pay the fee to switch you to the long distance carrier of your choice*. We are confident, however, that when you experience the low rates and quality service of First Communications, you will choose to remain with First Communications.

First Communications has your information as follows

Name
Address
Address 2
Account Number
Current Rate/Per Minute

If there is a need to update the above information or if you have any questions you can continue to call CellNet Long Distance at 1.866.NEXT.333 or you can call direct to First Communications at 1 800.274.1015

Welcome to First Communications, and thank you for your time.

Sincerely,

President
CellNet Long Distance

President & COO
First Communications

*For those customers that have PIC freeze on your local service and wish to switch to a different LD provider you must first remove the PIC with your local service provider and update your PIC information and renew your PIC freeze

FIRST COMMUNICATIONS LLC

This document sets forth the legal Terms and Conditions, ("T&Cs") governing the provision of intrastate, interstate and international long distance telecommunications services provided to you by First Communications LLC ("First"). These T&Cs contain the contractual obligations between you and First. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. In conjunction with certain other documents (as set forth below), these T&Cs form the Agreement between you and First and explain the respective legal rights concerning all aspects of the business relationship between you and First.

1. Contract Formation

Under the T&Cs of this Agreement, First offers to provide Services to you and other customers. By subscribing to or making use of our Services, you are agreeing to abide by the T&Cs of this Agreement. If you are an existing customer, your continued use of or subscription to our Services represents your acceptance of these T&Cs of service. If you do not agree to the T&Cs set forth in this Agreement, please contact us prior to using our Service or as soon as possible thereafter, and cancel your subscription by notifying us at (800) 274-1015 for residential customers and (800) 880-2934 for business customers or writing to us at First Communications LLC, 3340 West Market St. Akron, OH 44333. If you cancel your subscription, First will terminate your ability to make calls using our Service, however, you must make arrangements with your local telephone company to switch to a new provider for long distance service.

2. Definitions

As used in this Agreement, the following words have these respective meanings:

- a. "Agreement" means legal contract for Services between you and First, and consists of these T&Cs, the Letter of Agency ("LOA") if any, and any Service Plan under which you take Services from First. Notwithstanding any language to the contrary, these T&Cs take precedence over any conflicting language in any LOA or Service Plan.
- b. "Customer" or "you" means the person subscribing to our Services and with whom we have entered into this Agreement. This includes a person we reasonably believe is acting with the authority or knowledge of the person whose name is on the account.
- c. "First" means First Communications LLC and its successors and assigns. "First" is also referred to in this Agreement as "us," "our" and "we."
- d. "Parties" means First and you.
- e. "Service" or "Services" means any and >all of the intrastate, interstate or international long distance voice and data telecommunications services we provide to you, including intrastate, interstate or international long distance voice or data transmission services and other services that we may offer now or in the future. Regarding intrastate long distance service, this Agreement applies to all in-state ("intrastate") long distance, including intraLATA toll (sometimes called "local toll") calls in those states that do not regulate rates through filings with the state public utility commissions. In states where rates are regulated through filings with the state public utility commissions, this Agreement will apply to the extent permitted by law.
- f. "Service Plan" means any service plan, service agreement, rate plan, written service price list or description, or supporting material, describing the Services and their rates, fees and charges.
- g. "Subscribe" means the point at which you are able to utilize First Service.

3. Service

a. Term, Early Cancellation Fee. The term of this Agreement for each Service depends on the Service feature or promotion you select as it is described in the applicable Service Plan. The term of this Agreement for your switched long distance service begins on the date you subscribe to the Service. The term for service that requires installation of a circuit will begin the date the service commences or 5 days from the date the circuit is made available to you, whichever comes sooner. Signing an agreement requiring a circuit installation signifies that First Communications, in good faith, will begin work on the circuit delivery. If you cancel the order prior to circuit delivery, the cancellation fee will increase, but is not limited to, any charges First Communications incurred on your behalf to fulfill your order. If you select a Service Plan or promotion that requires a fixed term of more than one month (such as a one-year, two-year or three year Service Plan), you agree to purchase Service for the full term. The term of this Agreement will automatically renew for the same term as the original term at the end of the chosen term period unless First receives, in writing, a request for non-renewal/cancellation from you at least ninety (90) days prior to the end of the applicable term. Any Charges accrued between Customer's cancellation notice and ninety (90) days thereafter will remain your responsibility. If you select a Service Plan, feature or promotion with a fixed term, and terminate your service before the end of your fixed term, you will be in material breach of this Agreement. You agree our damages may be difficult to determine and agree to pay us, as a reasonable estimate of our damages (not as a penalty) and in addition to all other amounts you owe, any cancellation fee applicable to the Service. In addition, you may not be eligible for new Services and/or customer promotions in the future.

b. Rates. Information concerning your Service rates and other charges and conditions are described in your Service Plan, which is part of this Agreement. Service Plan information is maintained at www.firstcomm.com/BasicRatePlan (international rates are online at <http://www.firstcomm.com/internationalrates.asp>) and in First's public reference document, which is available for inspection at First's headquarters located at 3340 West Market St. Akron, OH 44333. You may call (800) 274-1015 for residential customers and (800) 880-2934 for business customers to obtain a copy of this Agreement, First's T&Cs, or any Rate Plan information. We may charge you for copying, handling and postage charges we incur. If you misrepresent your eligibility for any Service Plan, you agree to pay us the additional amount you would have been charged under the most favorable Service Plan for which you are eligible. We may change the prices or add new products with prices, or we may delete products or prices. The appropriate charges for your purchase will be billed to you on your bill. Usage charges for service are based upon the total time that you use First Services, subject to applicable billing increments and any additional charges which may apply. Usage begins when the called party picks up the receiver, as determined by hardware answer supervision. Chargeable time ends when either party hangs up, thereby releasing the service connection. Billing increments are determined by the Service Plan you select, and detailed information is available with your Service Plan. However, all calls are billed in billing increments and calls, which involve a fraction of a billing increment, will be rounded up to the next whole billing increment. In addition, if the computed call charges include a fraction of a cent, the fractional cents will be rounded up to the next whole cent, unless otherwise expressly stated in the Service Plan.

c. Availability/Interruption. We do not warrant or represent that the Service will operate without interruption or continuously. The Service we offer is subject to necessary facilities and equipment being available from other carriers. We may have to do things such as change the code or telephone number assigned to or used by you or the technical specifications of the Service, or interrupt the Service to perform tests and inspections or for operational or emergency reasons, or to install equipment, or provide information we think is necessary for health or safety, or concerning the quality of the Services we provide. If we must interrupt your Service for any of these reasons, we will endeavor, using reasonable means, to restore it as quickly as the underlying matter is resolved without any promise as to when we will be able to restore service, however, we do reserve the right to suspend, interrupt or restrict Service when in First's sole opinion it is necessary for the integrity, safety or maintenance of First's network or when we must comply with laws or regulations or if you are using the Service in violation of any provisions of this Agreement or the law in our sole discretion. Service is subject to transmission limitation or interruption caused by weather, terrain, obstructions such as trees or buildings, and other conditions. Service may be limited in some areas where coverage is not available or may be temporarily limited or interrupted due to system capacity limitations and system repairs or modifications or to combat potential fraud. Interruption may also result from nonpayment of charges by you. We may choose to block calls to certain numbers if, in our sole discretion, we are experiencing excessive billing, collection or fraud problems with calls to those numbers. If Service is interrupted for at least 24 hours and neither you nor someone you authorized to use the Service helped cause the interruption, a credit not to exceed the amount of our service charges during the affected period may be made to your account for the time Service was interrupted, if you request it. If based on our records and your documentation we determine that you are entitled to a credit, the credit will be provided on a subsequent bill.

d. Use of Service. You agree not to use the Service for any unlawful or abusive purpose or in any way that damages our property or interferes with or disrupts our system or other users or that are in any way unlawful, fraudulent or abusive. You must comply with all laws while using the Service and you must not transmit any communication that would violate any laws, court order, or regulation, or would likely be offensive or injurious to the recipient. You are responsible for all content you transmit while using the Service. Resale of Service is prohibited without our prior written consent and your attainment of any required regulatory approvals. You may not install any amplifiers, enhancers, repeaters or other devices that, in our sole discretion, modify, disrupt or interfere in any way with the facilities, wires or radio frequencies utilized by us to provide Service. You have no ownership rights to and you may not transfer or duplicate any assigned telephone number that may be provisioned by us to be used with any Service, and you agree we may change any such telephone number at any time with or without prior notice to you. Some services may not be available or may operate differently in selected markets/jurisdictions. We may add/delete coverage without providing notice to you.

e. Unauthorized Usage. You are responsible for all usage, including unauthorized usage, on your account. First will not be responsible for any fraud or misuse of the Services, including but not limited to calling card misuse or fraud. If your Service is fraudulently used, you must immediately notify us and provide us with the documentation and information we request (including affidavits and police reports). Once you notify us of fraudulent use, it may be necessary for us to interrupt your Service. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we reasonably request. Failure to provide reasonable cooperation may result in your liability for any additional fraudulent usage. First also reserves the right to suspend, interrupt or restrict Service, without notice to you, if we suspect, with or without notice from you, any use of Service, whether by you or any other party, that is in First's sole opinion deemed to be in violation of this Agreement, fraudulent, illegal or in any way a misuse of the Service.

f. Service Disconnection 30-Day Notice. When requesting a disconnection of your circuit, send your request in writing to First Communications, LLC, Attention Customer Care, 3340 West Market Street, Akron, Ohio 44333 thirty days in advance of the date you wish service to cease. See Section 3a, Term, Early Cancellation Fee, for additional information.

4. Charges/Payments/Default

a. Generally. You are responsible for paying all charges to your account, including but not limited to: minutes of use, airtime, access, features, data usage, long distance, directory and operator or directory assistance charges, monthly recurring charges (MRCs), nonrecurring charges, and any taxes, surcharges, fees, assessments, or recoveries determined by us to be imposed on you or us as a result of use of the Service on your account (collectively "Charges"). If you subscribe to or activate Service on behalf of another but were unauthorized to do so, you will be personally responsible for all charges to the account and will be fully bound by this Agreement as though you had activated Service on your own behalf.

b. Billing and Payment. We will provide your bill in a format that identifies the Charges with reasonable specificity and which may change from time to time. Payment of all charges is due to First within 30 days of the date of your invoice ("due date"). Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, we may make reasonable adjustments and proration. Usage may be backbilled in a subsequent month to the extent allowed by applicable law and if so, this usage will be charged as if used in the month billed. We will charge a fee not to exceed that allowed by applicable law for all returned checks.

c. Customer Service. If you are having a service or billing problem or inquiry, you may contact us at the telephone number on your bill or you may call First's Customer Service Department toll-free at (800) 274-1015 for residential customers and (800) 880-2934 for business customers. We will make all reasonable attempts to resolve your problem or inquiry.

d. Late Payments/Disputes. All amounts due must be paid by the due date. You agree to pay us a late payment fee of 1.5 percent per month for the period(s) for which such charges would have been payable, for amounts unpaid 31 days after the date of the invoice. Even if we accept late or partial payments (even if marked "Paid in Full"), it will not waive any of our rights to collect the full amount due under this Agreement. If you object to any of the charges on your bill, or if you are sending us a payment in full for any amounts that are in dispute, you must (i) notify us in writing, (ii) mark the outside of the envelope "Billing Dispute", and (iii) send it to us at our address provided on the invoice. We must receive your objection within 60 days after you receive the invoice. If you do not meet each of these requirements, you will waive any objection.

e. Default/Termination. In addition to our other rights to suspend or terminate Service described elsewhere in this Agreement, if you miss a payment, we may suspend the Services or end this Agreement 30 days after the payment was due. If we suspend the Services and you miss another payment during the 12 months after we resume the Services, we may then suspend the Services or terminate this Agreement (or both) 15 days after the payment was due. If you breach any representation to us or fail to perform any of the promises you made in this Agreement, or if you are subject to any proceeding under the Bankruptcy Act or similar laws, you will be in default, and we may, without notice to you, suspend Service and/or terminate this Agreement, in addition to all other remedies available to us. We may require reactivation charges to renew Service after termination or suspension. Upon any termination or expiration of this Agreement, you are responsible for paying all amounts and charges that you owe under this Agreement, including any applicable cancellation fee and/or the remaining balance of charges owed for any minimum usage commitments.

f. Deposits/Credit Reports/Return of Balances. You authorize us to ask consumer and/or commercial reporting agencies, trade references or banking institutions to furnish us with employment and/or credit information. You also consent to our periodic rechecking of this information and to our reporting personal and/or business payment and credit history to the appropriate agencies. If you believe that we have reported inaccurate information about your account to a consumer-reporting agency, you may send us a written notice describing the specific inaccuracy. We may require that you make an initial deposit or we may set a service limit before we establish or maintain Service for you. The deposit will be held as a partial guarantee of payment and cannot be used by you to pay your bill or delay payment. Unless otherwise required by law, deposits may be mixed with other funds and will not earn interest. We may require you to increase your deposit at any time to reflect your estimated monthly charges and we will base that increase on your actual use of the Service or on our reevaluation of your ability to pay. You may ask us to reevaluate your deposit on an annual basis, which may result in a partial or total refund of the deposit to you or a credit to your account. If you default on this Agreement is terminated, we may, without notice to you, apply any deposit towards payment of charges due. Unless otherwise required by law, after approximately 120 days following termination of this Agreement, any remaining deposit or other credit will be returned without interest to you at your last known address.

g. Credit Card & Service Restrictions. >If available as an option and if you choose to pay by credit card, you agree to the rules governing that payment option, including applicable limits on the amount of Service that may be used before making a payment. No additional notice or consent is required before we invoice your credit card or debit the account for all amounts due to us. We will notify you of any limits that we impose. If such limits are placed on

your account, you may be required to pay for Service with a valid major credit card. You agree to provide a credit card and not a debit card for this feature. You also agree to indemnify us for any claims or expenses resulting from your providing a debit card instead of a credit card. IF YOU CHOOSE THIS OPTION, YOU AGREE THAT WE MAY CHARGE YOUR CREDIT CARD FOR SERVICE WHEN YOUR LIMIT HAS BEEN REACHED. THIS PRACTICE MAY RESULT IN YOUR CREDIT CARD BEING CHARGED MORE THAN ONE TIME IN A MONTH. If your credit card is invalid or payment is not made by the issuer of your credit card at the time that a charge is attempted, you will not be able to use the Service until your account is paid in full.

h. Account Information. We will use commercially reasonable means to protect the confidentiality of your account information. We may assume that any person able to provide your name, address, the last four digits of your social security number and/or information about you which is not publicly available is authorized by you to receive information about and make changes to your account, including adding new Services. If you are receiving Service on a business Service plan through your employer, you authorize us to share your account information with your employer.

5. Limitation of Our Liability.

We intend for the following limitations and exclusions of our liability to apply to the fullest extent permitted by law:

a. Limitation of Liability. IF OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES DAMAGE TO PERSON OR PROPERTY, WE WILL BE LIABLE FOR NO MORE THAN THE AMOUNT OF DIRECT DAMAGES TO THE PERSON OR PROPERTY. FOR ANY OTHER CLAIM, WE WILL NOT BE LIABLE FOR MORE THAN THE AMOUNT FOR ALL CHARGES FOR THE SERVICES DURING THE AFFECTED PERIOD. FOR ALL CLAIMS, WE WILL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR REVENUE OR INCREASED COSTS OF OPERATION. FURTHER, AT NO TIME WILL WE BE LIABLE FOR PUNITIVE, RELIANCE OR SPECIAL DAMAGES OF ANY TYPE. THESE LIMITATIONS APPLY EVEN IF THE DAMAGES WERE FORESEEABLE OR IF WE WERE TOLD THEY WERE POSSIBLE, AND THE LIMITATIONS APPLY WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION, OR ANY OTHER LEGAL OR EQUITABLE THEORY. FIRST WILL NOT BE LIABLE FOR ANY DAMAGES IF SERVICES ARE INTERRUPTED OR THERE IS A PROBLEM WITH THE SERVICES OR EQUIPMENT OF SOME OTHER PARTY. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT. WE ARE NOT AN OPERATOR SERVICE PROVIDER AND AS SUCH DO NOT HANDLE EMERGENCY CALLS. WE ARE NOT LIABLE IN ANY WAY FOR ANY CALL TO ANY EMERGENCY PROVIDER OR THE FAILURE TO CONNECT TO SUCH PROVIDER OR ANY ACTION THAT OCCURS OR FAILS TO OCCUR AS A RESULT.

b. Indemnification. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD US, OUR AFFILIATES AND AGENTS AND ANYONE PROVIDING SERVICES TO YOU ON OUR BEHALF, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO THIS AGREEMENT OR OUR PROMISES OR STATEMENTS MADE IN IT AND USE OF THE EQUIPMENT OR SERVICE, UNLESS DUE TO OUR GROSS NEGLIGENCE. IT IS YOUR RESPONSIBILITY TO CONFORM TO ALL SUCH LAWS OR REGULATIONS AND YOU WILL INDEMNIFY US FROM CLAIMS ARISING FROM ANY SUCH USE WHETHER LAWFUL OR NOT. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

c. No Warranties. WE MAKE NO EXPRESS WARRANTY REGARDING THE SERVICE OR EQUIPMENT AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WE DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTY ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. WE ARE NOT THE MANUFACTURER OF EQUIPMENT AND ANY STATEMENT REGARDING IT SHOULD NOT BE INTERPRETED AS A WARRANTY. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

d. Force Majeure. Matters Beyond our Reasonable Control. If we cannot do what we have promised in this Agreement because of something beyond our reasonable control such as lightning, flood, exceptionally severe weather, or other Acts of God, fire or explosion, civil disorder, war or military operations, national or local emergency, anything done by any government or other competent authority or labor difficulties of any kind (including those involving our employees), unavailability of network facilities (including third parties), we will not be liable for this.

6. Resolution of Disputes / Binding Arbitration.

PLEASE READ THIS SECTION CAREFULLY. IT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION. ARBITRATION IS FINAL AND BINDING AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT. YOU CONTINUE TO HAVE CERTAIN RIGHTS TO OBTAIN RELIEF FROM A FEDERAL OR REGULATORY AGENCY. THIS SECTION SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

a. Choice of Law and Forum. Where our Service T&Cs are regulated by a state agency or the Federal Communications Commission, the regulations are available for your inspection, if there is any inconsistency between this Agreement and those regulations, those regulations shall govern and this Agreement shall survive and be deemed amended as necessary to conform to such regulations. To the extent this Agreement is not subject to FCC or state regulations, you agree that the laws of the State of Ohio govern this Agreement and the relationship between First and you. The Parties further agree that to the fullest extent permitted under this Agreement, Akron, Ohio will be the exclusive forum for any claim, dispute or other difference (collectively, the "disputes") that may arise between them and that the Parties are subject to jurisdiction in Akron, Ohio.

b. Arbitration. Any disputes that arise between the Parties, except for those disputes that fall exclusively within the jurisdiction of a state or federal regulatory body, shall be exclusively resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association with arbitration to occur in Akron, Ohio. The Parties agree that their disputes will be resolved individually and shall not be resolved on a consolidated or class basis or joined with disputes of any third party. The arbitrator(s) may award declaratory relief, preliminary and permanent injunctive relief, and direct compensatory damages, but may not award any incidental, consequential, punitive or other damages disclaimed herein and each Party waives, to the fullest extent permitted by law, any claims for any such damages. To the extent such damages may not be so waived, if an arbitrator decides to award such damages they shall be limited to the total amount of service charges paid by you to us in connection with the Service that is the subject of the dispute.

c. Pre-arbitration Notice. Before the initiation of any arbitration between the Parties, written notice of any disputes shall be provided pursuant to the notice provisions of this Agreement. If the dispute cannot be resolved within 60 days of receipt of such notice, either Party may initiate arbitration of the dispute.

7. Changes to this Agreement.

First may change the Charges for the Services from time to time. We may decrease Charges without providing advance notice. First will notify the Customer of increases in Charges by bill insert, bill message or other notice. With respect to all other changes to this Agreement other than increases to Charges, First will notify you, by a posting on its website, recorded announcement, bill insert, bill message, newspaper ad, postcard, letter, call to your billed/account number, or e-mail to an address provided by you. Choice of notification methods will remain in First's sole discretion. Increases to the Charges and all other changes to this Agreement are effective no sooner than fifteen days after First posts them on our website at www.firstcomm.com. Notwithstanding the above, First withholds the right to make any changes, without notice to you, that it deems necessary or appropriate (increases or decreases) to any taxes, surcharges, fees, assessments, or other recoveries (including without limitation the recovery of costs associated with Universal Service obligations and primary interexchange carrier charges) arising under, based upon or required by state or federal statute or regulation. If you do not agree to any change made by First to this Agreement, you may terminate the Agreement by giving us notice as described below. You have the option to change your Service or features at any time by notifying us, and you may take advantage of those of our promotions for which you qualify, provided that you comply with any requirements of the change or the promotion, including, where applicable, extending the term of this Agreement. If we allow you to suspend your account for a temporary period, we may extend the term of your Agreement by the length of the temporary suspension.

8. How to Give Notice to Us.

The notice given under this Agreement may be telephonic: (800) 274-1015 for residential customers and (800) 860-2934 for business customers by following the instructions of the Customer Care Representatives at these numbers, or, as required under some sections of this Agreement, written and delivered, postage prepaid to the address shown below:

First Communications LLC, 3340 West Market St., Akron, OH 44333, Attn: Legal Department. If we change our address or toll free Customer Service telephone number, we will notify you on your bill or by other written means. Written notice to us will be effective when directed to our Legal Department and received by us. Your notice must specify your account number(s) and telephone number(s). Verbal notices will be deemed effective on the date reflected in our records.

9. How We Give Notice to You.

Written notices to you will be considered to have been received by you 3 days following the date deposited in the U.S. Mail addressed to your address as reflected in our files or immediately if we notify you by an electronic means such as e-mail or short messaging service. You are responsible for notifying us of any change in your address.

10. Attorneys' Fees.

If suit is brought or an attorney is retained by us to enforce the terms of this Agreement or to collect any moneys due under this Agreement or to collect money damages for breach of this Agreement, then we will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, witness fees, court costs, costs of investigation, arbitration costs and other related expenses incurred in connection therewith.

11. Miscellaneous.

a. Privacy. We are not liable for any lack of privacy that may be experienced with regard to the Service. You authorize our monitoring and recording of calls to us concerning your account or the Service and you consent to our use of automatic dialing equipment to contact you. We have the right to intercept and disclose any transmissions over our facilities in order to protect our rights or property or pursuant to court order or subpoena.

b. Assignment. We may assign all or part of this Agreement without such assignment being considered a change to the Agreement, and without notice to you. We are then released from all liability. You may not assign this Agreement without our prior consent.

c. Entire Agreement. These T&Cs, together with any other documents directly or indirectly referenced herein are made a part of these T&Cs, and represent the entire agreement between you and us relating to the subject matter of this Agreement, which may only be amended as described in this Agreement. This Agreement supersedes any prior written or oral understanding between you and us.

d. Severability. If any term of this Agreement (including without limitation a Service Plan issued hereunder) is determined to be unenforceable, then such term will be enforced to the maximum extent permitted by law, rather than voided, and the remaining terms of this Agreement will remain in full force and effect.

e. Other First Services. You may receive special promotions or discounts on other Services and Products offered by First in connection with the purchase of certain Services and Products. These promotions or discounts may terminate upon termination or expiration of this Agreement.

f. Capacity. You represent that you are legally competent to enter into this Agreement, that you are over 18 years old, and that you are not aware of any disability that would prevent you from entering into this Agreement.

g. Waiver of Claims. If we do not enforce a claim or right, this does not amount to a waiver of our right to enforce such a claim or right.

12. Unlimited Calling.

All products are designed for customers who use their phone lines primarily for residential voice calling, i.e. calling friends, family etc. These products are not intended for phone lines that are connected to the Internet for extended periods of time or for commercial applications. If after signing up for service you are on the Internet for significant periods of time or making non-residential phone calls, you may be assessed an additional monthly charge, be disconnected, or be moved to a different product. Periodically checking your email, surfing the Internet, calling for personal business or sending faxes is fine. Very few of our customers stay connected long enough to be assessed the additional fee. The additional monthly fee is for customers who have internet or data usage in excess of 5000 minutes or 2000 long distance minutes in a month.